



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Foley & Lardner LLP
Washington Harbor
3000 K Street, Suite 500
Washington, DC 20007-5109

COPY MAILED

DEC 30 2005

OFFICE OF PETITIONS

In re :
Ullrich et al :
Application No. 09/766,678 :
Patent No. 6,872,688 B2 :
Filing Date: January 23, 2001 :
Attorney Docket:034536-0448 :
RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This decision is in response to applicant's submission of a request titled REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER CFR 1.705(b) which is being considered as a request under 37 CFR 1.705(d). Applicants request that the Office adjust the PTA determination made at the time of the issuance of the patent from a determination of forty-six (46) days to a determination of ninety-seven (97) days.

Applicants request for reconsideration of PTA is granted. The Office will adjust the PTA determination to reflect this decision. In addition, the Office will *sua sponte* issue a certificate of correction reflecting that the proper amount of PTA at the time of issuance is ninety-seven (97) days.

Applicants arguments are persuasive. Applicants agreed with the zero day determination at the time of the mailing of the notice of allowance but disagreed as to how much applicant delay had accrued at the time of the mailing of the notice of allowance. Applicants assert that the applicant delays all pursuant to 37 CFR 1.704 (b) accrued to an amount of three hundred and thirty-four (334) days not three hundred and eighty-five days as calculated by the Office. Applicants assert that the Office erred in determining the actual date of response to the missing parts requirement. Applicants assert that the actual response date was November 9, 2001 not January 28, 2002. Accordingly, delay amounted to 123 days not 203 days.

Applicants arguments are persuasive. At the time of the mailing of the notice of allowance the amount of PTA was zero with 3 days of applicant delay and 334 days of Office delay. Subsequent to the notice of allowance, the patent issued 431 days beyond three years. Accordingly, at the time of the issuance of the patent, the actual determination of PTA is ninety-seven (97) days.

After mailing of this decision, the Office will forward the application to the certificate of corrections branch for a prompt issuance of a certificate of correction.

The Office has assessed the \$200.00 fee required for this decision. No additional fees are required.

Any questions relating to this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery A. Fries
Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy.

Cc: Draft certificate of correction
Adjusted Pair Calculation